Supreme Court, U. S.
FILED
APR 25 1978
MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1533

ANGELA M. WILLIAMS and FRANK WILLIAMS,
Petitioners,

—against—

JOSEPH A. CALIFANO, JR., Secretary of Health, Education, and Welfare,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HENRY A. FREEDMAN
TIMOTHY J. CASEY
Center on Social Welfare Policy and Law, Inc.
95 Madison Avenue
New York, New York 10016
(212) 679-3709

MICHAEL TRISTER
Sobol and Trister
Suite 501
910 Seventeenth St., N.W.
Washington, D.C. 20006
(202) 223-5022

JAMES W. BLACKMAN
LOIS C. DAVIS
New Orleans Legal Assistance Corporation
226 Carondolet Street, Suite 605
New Orleans, Louisiana 70130
(504) 529-7551

Attorneys for Petitioners

TABLE OF CONTENTS

PAGE

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Constitutional and Statutory Provisions Involved 2

Statement of the Case 3

REASONS FOR GRANTING THE WRIT:

1. This Case Raises an Important Question Under the Social Security Act That Has Previously Been Considered But Not Decided by This Court 6

2. The Decision Below Conflicts With This Court's Decisions in *Jimenez* v. *Weinberger* and *Vlandis* v. *Kline* 7

3. The Courts Below Misinterpreted and Misapplied This Court's Decision in *Weinberger* v. *Salfi* 11

CONCLUSION 13

APPENDIX A

Per Curiam Opinion of the United States Court of Appeals for the Fifth Circuit 1a

Opinion of the District Court for the Eastern District of Louisiana 2a

PAGE

APPENDIX B

Decisions of the Social Security Administration 13a

APPENDIX C

Statutory Provisons Involved 22a

TABLE OF AUTHORITIES

Cases:

Brew v. Mathews, No. 76-131 (E.D. Pa. July 27, 1977) .. 7

Clayborne v. Califano, No. 77-C-2323 (E.D. N.Y. filed Nov. 23, 1977) 7

Damon v. Secretary of H.E.W., No. 74-161 (D. Vt. Aug. 19, 1976), *reversed on statutory grounds*, 557 F.2d 31 (2d Cir. 1977) 7

Hagler v. Finch, 451 F.2d 45 (9th Cir. 1971), *cert. denied* 405 U.S. 1071 (1972) 7

Jimenez v. Weinberger, 417 U.S. 628 (1974) 7, 8, 9, 11

Mathews v. Lucas, 427 U.S. 495 (1976) 8, 9

Morris v. Richardson, 455 F.2d 775 (4th Cir. 1972), *petition for cert. granted*, 409 U.S. 841 (1972), *petition for cert. dismissed as improvidently granted, sub nom.* Morris v. Weinberger, 410 U.S. 422 (1973) 6, 7

Stanley v. Secretary of H.E.W., 356 F. Supp. 793 (W.D. Mo. 1973) 7

Stanton v. Weinberger, 502 F.2d 315 (10th Cir. 1974) .. 7

PAGE

Trimble v. Gordon, 430 U.S. 762 (1977) 8

Vlandis v. Kline, 412 U.S. 441 (1973) 9, 10, 11

Watts v. Califano, No. 77-227 (D. Ariz. filed Oct. 14, 1977) 7

Weinberger v. Salfi, 422 U.S. 749 (1975) 5, 10, 11, 12

Constitution of the United States:

Fifth Amendment 2

Statutes:

28 U.S.C. §1254(1) 2

Social Security Act:

Title II, 42 U.S.C. §401 *et seq.* 3
§202(b), 42 U.S.C. §402(b) 12
§202(c), 42 U.S.C. §402(c) 12
§202(d)(1), 42 U.S.C. §402(d)(1) 3, 10, 12
§202(d)(3), 42 U.S.C. §402(d)(3) 3, 4, 12
§202(d)(4), 42 U.S.C. §402(d)(4) 3, 4
§202(d)(8), 42 U.S.C. §402(d)(8) 2, 3, 4, 5, 6, 7, 10
§205(g), 42 U.S.C. §405(g) 5
§216(b), 42 U.S.C. §416(b) 12
§216(c)(5), 42 U.S.C. §416(c)(5) 11
§216(e), 42 U.S.C. §416(e) 3, 10, 11, 12
§216(f), 42 U.S.C. §416(f) 12
§216(h)(3), 42 U.S.C. §416(h)(3) 8

PAGE

Public Laws:

92-603
§111(a) 6

95-216
§334(a) 12
§334(b) 12

Statutes at Large:

86 Stat 1346 6
91 Stat. 1544 12

State Statute:

La. Stat. Ann.—Civ Code Art. 214 9

Other Authorities:

Goodman, Oberman, Wheat, *Rights and Obligations of Child Support*, 7 Southwestern L. Rev. 36 (1975) 9
H.R. Rep. No. 92-231, 92d Cong. 1st Sess. (1971) 12
S. Rep. No. 92-1230, 92d Cong. 2d Sess. (1972) 12

In the

Supreme Court of the United States

October Term, 1977

No. .....

Angela M. Williams and Frank Williams,

Petitioners,

—against—

Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Angela M. Williams and Frank Williams, request the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on January 26, 1978.

Opinions Below

The *per curiam* opinion of the Court of Appeals, 566 F. 2d 1044 (5th Cir. 1978), and the opinion of the District Court for the Eastern District of Louisiana, 441 F. Supp. 1045 (E.D. La. 1977), appear in Appendix A to this petition. The decisions of the Social Security Administration appear in Appendix B.

Jurisdiction

The judgment of the Court of Appeals for the Fifth Circuit was entered on January 26, 1978. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether section 202(d)(8) of the Social Security Act denies petitioners the equal protection of the laws guaranteed by the Fifth Amendment to the United States Constitution insofar as it denies certain adopted children child's benefits while permitting identically situated natural children, stepchildren, and other adopted children to receive such benefits.

2. Whether section 202(d)(8) of the Social Security Act denies petitioners the due process of law guaranteed by the Fifth Amendment to the United States Constitution by conclusively presuming that adopted children born after their parent's disability are not dependent upon their disabled parent.

Constitutional and Statutory Provisions Involved

This action was brought to enforce the provisions of the Fifth Amendment to the Constitution of the United States:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The following statutory provisions are involved and are set forth in Appendix C to this petition:

1. Social Security Act §202(d)(1), 42 U.S.C. §402(d)(1).
2. Social Security Act §202(d)(3), 42 U.S.C. §402(d)(3).
3. Social Security Act §202(d)(4), 42 U.S.C. §402(d)(4).
4. Social Security Act §202(d)(8), 42 U.S.C. §402(d)(8).
5. Social Security Act §216(e), 42 U.S.C. §416(e).

Statement of the Case

Under Title II of the Social Security Act, disability benefits are provided to insured adults who have a disability which prevents them from working and supporting themselves. 42 U.S.C. §401 *et seq.* Section 202(d)(1) provides child's insurance benefits for each unmarried "child"[1] of an individual receiving disability benefits if the child is "dependent" upon the individual at the time the child's application for benefits is filed. 42 U.S.C. §402(d)(1).

Under section 202(d)(3) of the Act, natural children, whether born before or after the wage-earner's entitlement

---

[1] Under section 216(e)(1), the term "child" includes a "child or legally adopted child of an individual." 42 U.S.C. §416(e)(1). Under section 216(e)(2), the term "child" includes a "stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died." 42 U.S.C. §416(e)(2).

to disability benefits, and children adopted prior to the wage-earner's entitlement are "deemed" to be dependent upon the disabled wage-earner without proof of actual support. 42 U.S.C. §402(d)(3). Under section 202(d)(4), stepchildren, whether their relationship to the wage-earner began prior to or after his or her entitlement, are "deemed" dependent if they are living with or receiving one-half of their support from the wage-earner at the time of their application for benefits. 42 U.S.C. §402(d)(4).

These presumptions of dependency do not apply to most children who are adopted after the wage-earner's entitlement. Nor are such children permitted to establish their actual dependency upon the wage-earner. Instead, under section 202(d)(8) of the Act, after-adopted children are conclusively presumed not to be dependent upon the wage-earner unless they lived with and received one-half of their support from the wage-earner for the year prior to the wage-earner's disability.[2] 42 U.S.C. §402(d)(8).

Petitioner, Angela Williams, is the adopted daughter of petitioner Frank Williams, a recipient of Social Security disability benefits. Angela was born in June, 1972, four months after Mr. Williams began receiving disability benefits, and has lived continuously with Mr. Williams and his wife since approximately one and a half weeks after her birth. Mr. and Mrs. Williams began adoption proceedings under the supervision of the Louisiana Department of Public Welfare and a final decree of adoption was issued by the

[2] The presumption of non-dependency does not apply to after-adopted grandchildren and stepgrandchildren if they were living with and supported by the wage-earner for the year prior to their application. 42 U.S.C. §402(d)(8)(D)(ii)(III). It also does not apply to after-adopted natural or step-children, 42 U.S.C. §402(d)(8)(C), since these children would be eligible for benefits without regard to the adoption.

Juvenile Court of the Parish of Orleans of the State of Louisiana in January, 1974.

Mr. Williams filed an application for child's insurance benefits for Angela in January, 1974. This application was denied by the Social Security Administration on May 22, 1974 on the sole basis of section 202(d)(8). (App. B p. 13a). This denial was affirmed in a reconsideration decision issued on August 8, 1974 (App. B p. 14a), a hearing decision issued on August 26, 1975 (App. B p. 17a), and an Appeals Council decision issued on December 11, 1975 (App. B p. 20a).

On February 6, 1976, within 60 days after the issuance of the final agency decision, this action was commenced in the District Court for the Eastern District of Louisiana under section 205(g) of the Act, 42 U.S.C. §405(g). On April 11, 1977, the district court issued an opinion granting respondent's motion for summary judgment. (App. A p. 2a). Relying almost exclusively on this Court's decision in *Weinberger* v. *Salfi*, 422 U.S. 749 (1975), the district court found section 202(d)(8) to be constitutional on the ground that Congress' concern with abuse of the Act by the sham adoption of children furnished "a rational basis for the challenged section." (App. A p. 7a). On January 26, 1978, the Court of Appeals for the Fifth Circuit affirmed the district court's judgment in a *per curiam* opinion "for the reasons stated in [the district court's] memorandum opinion." (App. A p. 1a).

REASONS FOR GRANTING THE WRIT

1. This Case Raises an Important Question Under the Social Security Act That Has Previously Been Considered But Not Decided by This Court.

In *Morris* v. *Richardson*, 455 F. 2d 775 (4th Cir. 1972), *petition for cert. granted*, 409 U.S. 841 (1972), *petition for cert. dismissed as improvidently granted, sub nom. Morris* v. *Weinberger*, 410 U.S. 422 (1973), this Court granted certiorari to review a decision of the United States Court of Appeals for the Fourth Circuit upholding the constitutionality of section 202(d)(8)(E) of the Social Security Act, the predecessor of the section in issue here.[3] The writ was dismissed as improvidently granted, however, after Congress repealed section 202(d)(8)(E).[4] Pub. L. 92-603, §111(a), 86 Stat. 1346 (1972).

---

[3] Under section 202(d)(8)(E), which was in effect from 1968 to 1972, after-adopted children of disabled individuals were entitled to child's benefits if they had been "legally adopted . . . under the supervision of a public or private child-placement agency . . . in an adoption decreed by a court of competent jurisdiction within the United States." 42 U.S.C. §402(d)(8)(E) (1971 ed.). Petitioner challenged the requirements of section 202(d)(8)(E) as unreasonable when applied to an after-adopted child whose adoption had not been supervised by a child-placement agency because none existed in her county of residence.

[4] The Solicitor General argued that as a result of the 1972 amendments the issue under section 202(d)(8)(E) was "no longer of continuing importance," because there were no other pending cases and because there was only a narrow class of children, who applied between 1968 and 1972, whose benefits could be affected by the challenged provision. *Morris* v. *Richardson, supra*, Brief for the Respondent at 11. The Court, of course, could not have considered the constitutionality of the new provision, challenged here, because that section had never been considered by the Social Security Administration or by the lower courts.

The statute involved in *Morris* made all after-adopted children eligible for benefits so long as they were adopted under specific adoption procedures. Here, since almost all after-adopted children are excluded from benefits, the number of persons affected is far greater.[5] However, the underlying question is the same in both cases—whether, and if so, under what circumstances, Congress may exclude adopted children from benefits that are provided to identically situated natural children, stepchildren, and other adopted children.[6] This Court should grant certiorari here to finally resolve this important question.

2. The Decision Below Conflicts With This Court's Decisions in *Jimenez* v. *Weinberger* and *Vlandis* v. *Kline*.

A. In *Jimenez* v. *Weinberger*, 417 U.S. 628 (1974), after-born illegitimate children were deemed dependent upon their disabled parent and therefore eligible for benefits even when not dependent if they met certain objective tests

---

[5] Since 1972, the rules applicable to children of disabled wage-earners have been applied to children of retired wage-earners. 42 U.S.C. §402(d)(8). In addition to the instant case, petitioners are aware of four other cases challenging the constitutionality of section 202(d)(8). *Brew* v. *Mathews*, No. 76-131, (E.D. Pa. July 27, 1977); *Damon* v. *Secretary of H.E.W.*, No. 74-161, (D. Vt. Aug. 19, 1976), *reversed on statutory grounds*, 557 F.2d 31 (2d Cir. 1977); *Clayborne* v. *Califano*, No. 77-C-2323, (E.D. N.Y., filed Nov. 23, 1977); *Watts* v. *Califano*, No. 77-227, (D. Ariz., filed Oct. 14, 1977).

[6] In addition to the cases involving §202(d)(8), see note 5, *supra*, Congress' treatment of adopted children under predecessor sections of the Act has been challenged in a number of cases. *Stanton* v. *Weinberger*, 502 F.2d 315 (10th Cir. 1974); *Morris* v. *Richardson, supra*; *Hagler* v. *Finch*, 451 F.2d 45 (9th Cir. 1971), *cert. denied*, 405 U.S. 1071 (1972); *Stanley* v. *Secretary of H.E.W.*, 356 F. Supp. 793 (W.D. Mo. 1973).

regarding their parentage. After-born illegitimate children who could not meet these tests were denied benefits even if dependent.[7] The Secretary argued this classification prevented spurious claims for child's benefits through fabricated evidence of relationship or dependency. 417 U.S. at 636.

This Court recognized that the prevention of spurious claims was a legitimate governmental interest, but it nevertheless found the classification unconstitutional. Id. It concluded that the blanket and conclusive exclusion of a subclass of illegitimate children did not serve the Act's primary purpose to provide support for the dependent children of disabled wage-earners, since it included some illegitimate children who were not dependent and excluded others who were dependent. Id. Nor was the classification rationally related to its purported purpose since the potential for spurious claims was identical for the after-born illegitimate children eligible for benefits as for those ineligible for benefits.[8] 417 U.S. at 636-37.

This case is indistinguishable from *Jimenez*. After-born stepchildren and natural children are deemed dependent upon their disabled parent and therefore eligible for benefits even when not dependent. After-born adopted children

[7] In *Jimenez*, illegitimate children could also qualify for benefits if the disabled wage-earner contributed to their support or lived with them in the year prior to the parent's disability. 42 U.S.C. §416(h)(3). After-born illegitimate children obviously could not satisfy either of these tests. Identical rules apply to after-adopted children in this case.

[8] The majority opinion in *Jimenez* explicitly disavowed any reliance on the status of illegitimate children in reaching its decision. 417 U.S. at 631-633. Subsequent cases have reaffirmed that cases involving discrimination on the basis of illegitimacy are judged by the same constitutional standards as are applicable to the adopted children here. *Trimble* v. *Gordon*, 430 U.S. 762 1977); *Mathews* v. *Lucas*, 427 U.S. 495 (1976).

are denied benefits even if dependent. Therefore, the classification does not serve the Act's primary purpose since it excludes after-born children who are dependent and includes after-born children who are not dependent.[9]

The Secretary argues that this classification prevents sham claims based upon relationships formed solely to acquire benefits. The classification is not rationally related to this purpose since the potential for such claims is equal to or greater for after-born natural children and stepchildren than for adopted children. State rules regulating adoptions make it less likely that children will be adopted solely in order to obtain benefits than that wage-earners will have their own children or will marry persons with children for this purpose.[10]

B. In *Vlandis* v. *Kline*, 412 U.S. 441 (1973), college students challenged a Connecticut statute which permanently and conclusively presumed them not to be Connecticut residents because they had lived outside Connecticut in the year prior to their application for admission to college.

[9] In *Mathews* v. *Lucas*, 427 U.S. 495 (1976), this Court upheld a requirement that certain illegitimate children prove their actual dependency on a deceased wage-earner although other illegitimate and legitimate children were deemed to be dependent. This Court made clear that the fatal defect in *Jimenez* which was not present in *Lucas* was the total denial of any opportunity to prove dependency. 427 U.S. at 511-13. That is precisely the effect of the rule challenged here.

[10] Under Louisiana Law, as under the law of almost all states, an "adopted person is considered *for all purposes* as the legitimate child . . . of the adoptive parent . . .", *La. Stat. Ann.—Civ. Code* Art. 214 (emphasis added), and must be treated like a natural child for all purposes including their parents' obligation to support. Under the laws of most states, however, a stepparent either has no support obligation to a stepchild or a support obligation narrower in scope than that applicable to a natural and adopted child. *See generally*, Goodman, Oberman, Wheat, *Rights and Obligations of Child Support*, 7 Southwestern L. Rev. 36, 36-51 (1975).

This Court held that this presumption was unconstitutional because the statute purported to be concerned with the bona fides of a student's residency but permanently and conclusively barred some students from establishing the bona fides of their residency. 412 U.S. at 452. As this Court explained in *Weinberger* v. *Salfi*, 422 U.S. 749 (1975), the constitutional principle established in *Vlandis* is that a statute which purports to be concerned with a fact cannot permanently and conclusively bar a class of persons from establishing the existence of that fact. 422 U.S. at 771-72.

This is precisely the defect in the statutory scheme challenged here. Under the Social Security Act, every "child" is eligible for benefits if he or she is dependent upon the wage-earner at the time of the child's application for benefits. 42 U.S.C. §402(d)(1). Adopted children are expressly included in the class of eligible children. 42 U.S.C. §416(e)(1). But, after-born adopted children are conclusively presumed not dependent upon the wage-earner at the time they apply for benefits. 42 U.S.C. §402(d)(8). Under *Vlandis*, as interpreted in *Salfi*, this conclusive presumption is unconstitutional.[11]

[11] In *Salfi*, the Social Security Act did not "purport to speak in terms of the bona fides of the parties to a marriage, but then make plainly relevant evidence of such bona fides inadmissible." 422 U.S. at 772. Rather, applicants were "completely free to present evidence that they meet the specified requirements." *Id.* In this case it cannot be disputed that after-born adopted children are completely barred from presenting evidence of their dependency.

3. The Courts Below Misinterpreted and Misapplied This Court's Decision in *Weinberger* v. *Salfi*.

Instead of following *Jimenez* and *Vlandis*, the lower courts in this case relied almost exclusively on *Weinberger* v. *Salfi, supra*. There this Court upheld provisions of the Social Security Act which required a wife and a stepchild to be related to a wage-earner for at least nine months prior to his death in order to qualify for survivors benefits. 42 U.S.C. §§416(c)(5), (e)(2).

In upholding this statutory requirement in *Salfi*, this Court emphasized that Congress had drawn the challenged provision as narrowly as possible to achieve the purpose of excluding sham marriages, and that Congress had excepted marriages possessing objective indicia of genuineness. 422 U.S. at 780-81. Furthermore, similar durational relationship requirements were applied in other situations where sham marriages were to be feared. 422 U.S. at 781-82. Finally, the only alternative to a blanket rule would have involved numerous costly and difficult hearings. 422 U.S. at 784-85.

The classification challenged here is far broader than necessary to achieve the purpose of excluding sham adoptions. After-born adopted children, with the exception of grandchildren and stepgrandchildren, are *permanently* barred from receiving benefits no matter how long their relationship with a disabled or retired wage-earner has lasted.[12] Nor has Congress excepted by relevant objective

[12] Thus, rather than comparing the rule at issue in this case with that at issue in *Salfi*, the more relevant comparison here is with Congress' treatment of retired and disabled wage-earners who marry after they become entitled to benefits. While a short

criteria adoptions that are plainly bona fide by any standard. Furthermore, Congress has not applied the same rule consistently in other situations where sham adoptions are likely to occur.[13] Finally, a number of less far-reaching alternative tests are available that could eliminate abuse without requiring individual hearings.[14]

Salfi, therefore, does not support the decision below.

---

waiting period is generally required, after-married spouses are not permanently precluded from receiving benefits despite Congress' concern with sham marriages. 42 U.S.C. §416(b), and 42 U.S.C. §402(b) *as amended by* Pub. L. No. 95-216, §334(a), 91 Stat. 1544 (1977) (wife's benefits); 42 U.S.C. §416(f), and 42 U.S.C. §402(c) *as amended by* Pub. L. No. 95-216, §334(b), 91 Stat. 1544 (1977) (husband's benefits).

[13] For example, under 42 U.S.C. §§402(d)(1)(C)(ii), 402(d)(3), 416(e)(1), if a disabled wage-earner dies; his or her adopted children, including an after-born adopted child such as Angela Williams, are eligible for survivors benefits without regard to the bona fides of their adoption. Similarly, children adopted prior to a wage-earner's disability or retirement are eligible for benefits without regard to the bona fides of their adoption. 42 U.S.C. §§402(d)(1), 402(d)(3), 416(e)(1). The likelihood of sham adoptions is as great in either of these situations as in the case of the after-born adopted children of a living wage-earner.

[14] Thus Congress could require a short waiting period before after-born adopted children could become eligible for benefits as it requires for stepchildren and for after-born adopted grandchildren, see notes 1, 2, *supra;* or it could require, as it did for the after-born adopted children of disabled wage-earners from 1968-1972, that the bona fides of adoptions be ensured by local courts and child care agencies, see note 3, *supra.* Although Congress discontinued this latter test in 1972, the legislative history indicates that it did so in order to treat the adopted children of disabled and retired wage-earners uniformly and not because of dissatisfaction with the requirements themselves. See H.R. Rep. No. 92-231, 92d Cong., 1st Sess. at 51-53 (1971); S. Rep. No. 92-1230, 92d Cong., 2d Sess. at 140-41 (1972).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY A. FREEDMAN
TIMOTHY J. CASEY
Center on Social Welfare Policy and Law, Inc.
95 Madison Avenue
New York, New York 10016
(212) 679-3709

MICHAEL TRISTER
Sobol and Trister
Suite 501
910 Seventeenth St., N.W.
Washington, D.C. 20006
(202) 223-5022

JAMES W. BLACKMAN
LOIS C. DAVIS
New Orleans Legal Assistance Corporation
226 Carondolet Street, Suite 605
New Orleans, Louisiana 70130
(504) 529-7551

Attorneys for Petitioners

Appendices

APPENDIX A

Per Curiam Opinion of the United States Court of Appeals for the Fifth Circuit

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 77-1618

SUMMARY CALENDAR.*

Filed Jan. 26, 1978.

ANGELA M. WILLIAMS *et al.*,

Plaintiff-Appellant,

—v.—

JOSEPH A. CALIFANO, JR., Secretary of Health, Education and Welfare,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana; Alvin B. Rubin, Judge.

Before: THORNBERRY, RONEY, and HILL, *Circuit Judges.*

PER CURIAM:

We affirm the judgment of the District Court for the reasons stated in its memorandum opinion which is reported at —— F. Supp. —— (E.D.La.1977).

AFFIRMED.

---

* Rule 18, 5 Cir.; see *Isbell Enterprises, Inc.* v. *Citizens Casualty Co. of New York et al.*, 5 Cir., 1970, 431 F.2d 409.

Opinion of the District Court for the Eastern District of Louisiana

UNITED STATES DISTRICT COURT

E. D. LOUISIANA, SECTION C.

Civ. A. No. 76-382.

Filed April 11, 1977.

ANGELA WILLIAMS, by and through her next of friend and father, FRANK WILLIAMS, on her behalf,

Plaintiff,

—v.—

F. DAVID MATHEWS, Secretary of Health, Education and Welfare,

Defendant.

ALVIN B. RUBIN, District Judge:

This action challenges the constitutionality of a denial of child's insurance benefits under Title II of the Social Security Act to a child adopted after the wage earner became entitled to disability benefits. The plaintiff asserts that 42 U.S.C. 402(d)(8), which mandates the denial of benefits, violates the plaintiff's rights guaranteed by the fifth amendment to the Constitution, including both the right to due process in the traditional sense and the right to equal protection of the laws, as subsumed within the meaning of the fifth amendment due process clause. Since it has not been shown that 42 U.S.C. 402(d)(8) denies any

of these rights, the defendant's motion for summary judgment is granted.

I

On January 15, 1974, the wage earner, Frank Williams, filed an application on behalf of Angela Williams, for child's insurance benefits under Title II of the Social Security Act. After full administrative hearings, and review, the application was denied.

II

Section 202(d)(1) of the Social Security Act ("the Act"), 42 U.S.C. 402(d)(1) provides a "child's insurance benefit" for every "dependent" "child" of an individual receiving benefits as these terms are defined in the Act. An adopted child is deemed dependent on his adopting parent "unless, at [the time the adopting parent filed an application for benefits] such individual was not living with or contributing to the support of such child *and*—(A) such child is neither the legitimate nor adopted child of such individual . . . " 42 U.S.C. 402(d)(3). (Emphasis Supplied.) Section 202(d)(8) of the Act, 42 U.S.C. 402(d)(8), provides in pertinent part:

> [A] child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of [the preceding parts of the statute].
>
> (C) unless such child—
>
> • • • • •
>
> (D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual . . . (II) if he is an individual [receiving disability benefits], for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or the month in which such individual became entitled to disability insurance benefits . . .

The words do not, in Judge Learned Hand's words,[1] dance in meaningless procession; indeed they do not dance at all. They are leaden and lifeless, scarcely skin of living thought, but they do yield a meaning of a fashion.

III

The wage earner, Frank Williams, was entitled to benefits beginning with the month of February 1972 for a disability that began on July 8, 1971. Angela M. Williams was born on June 17, 1972, and was finally adopted by the wage earner on January 15, 1974.

---

[1] Learned Hand, "Thomas Walter Swan", 57 Yale LJ. 169 at 169 (1947),

> In my own case the words of such an act as the Income Tax, for example, merely dance before my eyes in a meaningless procession: cross-reference to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of—leave in my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time.

She began living with the wage earner approximately one and a half to two weeks after birth, and she has no other relationship with the wage earner or his wife. She was, however, both born and adopted after her adoptive father became entitled to receive disability benefits.

IV

Section 202(d)(8) of the Act, 42 U.S.C. 402(d)(8), bars the payment of benefits to a child adopted after a disabled wage earner became due benefits unless the child

(1) is the natural child or step-child of the wage earner or

(2) was legally adopted in an adoption decreed by a court of competent jurisdiction within the United States *and* was living with the disabled wage earner in the United States and receiving at least one-half support from the disabled wage earner for the year before the wage earner became entitled to benefits.

Since the plaintiff was adopted *after* the wage earner became entitled to disability insurance benefits, and she was neither living with nor supported by the wage earner in the year immediately before the time he became qualified for disability benefits, she is precluded by the statute from receiving benefits unless the statute is, as plaintiff alleges, unconstitutional.

The test of the constitutionality of a statutory classification within the Social Security Act is well-settled. The Supreme Court has recently reiterated it:

> The standard for testing the validity of Congress' Social Security classification was clearly stated in *Flem-*

ming v. *Nestor,* 363 U.S. 603, 611 [, 80 S.Ct. 1367, 4 L.Ed.2d 1435] (1960):

> Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as Social Security, we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification.
>
> • • • • •

The relation between the equal protection analysis of *Dandridge* and the Fifth Amendment due process analysis of *Flemming* v. *Nestor* and *Richardson* v. *Belcher* [, 404 U.S. 78, 92 S.Ct. 254, 30 L.Ed.2d 231,] was described in the latter case in this language:

> A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is 'rationally based and free from invidious discrimination.' *Dandridge* v. *Williams,* 397 U.S. 471, 487 [, 90 S.Ct. 1153, 25 L.Ed.2d 491]. While the present case, involving as it does a federal statute, does not directly implicate the Fourteenth Amendment Equal Protection Clause, a classification that meets the test articulated in *Dandridge* is perforce consistent with the due process requirement of the Fifth Amendment. Cf. *Bolling* v. *Sharpe,* 347 U.S. 497, 499, 74 S.Ct. 693, 98 L.Ed. 884.

These cases quite plainly lay down the governing principle for disposing of constitutional challenges to classifications in this type of social welfare legislation.

Weinberger v. *Salfi,* 422 U.S. 749, 768-70, 95 S.Ct. 2457, 2468-69, 45 L.Ed.2d 522 (1975). Application of these standards to the instant action leads to the conclusion that Section 202(d)(8), as applied to the plaintiff, is constitutional.

This section was enacted as part of the 1972 amendments to the Act in what was euphemistically called an attempt to streamline then existing procedures and establish criteria regarding eligibility that would apply alike to retired and disabled workers. The Senate Finance Committee's report noted:

> • • • • •
>
> [T]he committee believes that benefits for a child who is adopted by a worker already getting old-age or disability benefits should be paid only when the child lost a source of support because his parent retired or became disabled, and that the law should include safeguards against abuse through adoption of children solely to qualify them for benefits . . . .

S.R. 92-1230, 92d Cong. 2d Sess., 141 (1972); U.S. Code Cong. & Admin. News 1972, pp. 4989, 5039. This furnishes a rational basis for the challenged section.

The congressional concern with abuse of the Act by the adoption of children is long-standing. The 1939 amendments to the Social Security Act, which first made provision for the payment of a child's insurance benefit, precluded the child's eligibility (which is called "entitlement") if it was based upon an adoption made less than five years before the entitlement of the wage earner. H.R. 728, 76th Cong., 1st Sess., (1939); Act of August 10, 1939, ch. 666, Section 209(k), 53 Stat. 1377. While the degree of concern and the method of prevention of abuse have varied through the years, Section 202(d)(8) expresses the current legis-

lative remedy for what it deemed to be a problem of potential abuse.

In *Weinberger* v. *Salfi*, 1975, 422 U.S. 749, 95 S.Ct. 2457, 45 L.Ed.2d 522, the Supreme Court considered a constitutional challenge to Sections 216(c)(5) and (e)(2), 42 U.S.C. 416(c)(5) and (e)(2), which condition eligibility for mother's and child's insurance benefits upon the existence of a marriage to a deceased wage earner of at least nine months duration. Reversing the lower court's decision, the Supreme Court noted:

> . . . the Secretary principally defends the duration-of-relationship requirement not as a reasonable legislative decision to exclude a particular type of risk from coverage, but instead as a method of assuring that payments are made only upon the occurrence of events the risk of which is covered by the insurance program. Commercial insurance policies have traditionally relied upon fixed, prophylactic rules to protect against abuses which could expand liability beyond the risks which are within the general concept of its coverage. For example, the insurance policies often cover deaths by suicide, but not those suicides which were contemplated when the policy was purchased. Frequently the method chosen to contain liability within these conceptual bounds is a strict rule that deaths by suicide are covered if, and only if, they occur some fixed period of time after the policy is issued. See, e. g., 9G Couch, Cyclopedia of Insurance Law § 40.50 (2d ed. 1962). While such a limitation doubtless proves in particular cases to be "under-inclusive" or "over-inclusive," in light of its presumed purpose, it is nonetheless a widely accepted response to legitimate interests in

> administrative economy and certainty of coverage for those who meet its terms. When the Government chooses to follow this tradition in its own social insurance programs, it does not come up against a constitutional stone wall. Rather, it may rely on such rules so long as they comport with the standards of legislative reasonableness enunciated in cases like *Dandridge* v. *Williams* and *Richardson* v. *Belcher*.
>
> Under those standards, the question raised is not whether a statutory provision precisely filters out those, and only those, who are in the factual position which generated the congressional concern reflected in the statute. Such a rule would ban all phophylactic provisions, and would be directly contrary to our holding in *Mourning* [v. *Family Publications Service, Inc.*, 411 U.S. 356, 93 S.Ct. 1652, 36 L.Ed.2d 318,] supra. Nor is the question whether the provision filters out a substantial part of the class which caused congressional concern, or whether it filters out more members of the class than non-members. The question is whether Congress, its concern having been reasonably aroused by the possibility of an abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would protect against its occurrence and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule.
>
> 422 U.S. 776-77, 95 S.Ct. 2472.

Like the duration of marriage requirement validated in *Salfi*, the prophylactic approach of Section 202(d)(8) passes constitutional muster.

While it may be urged that a narrower, more individualized remedy would be appropriate, the Supreme Court's comments in *Salfi* are instructive.

> While it is possible to debate the wisdom of excluding legitimate claimants in order to discourage sham relationships, and of relying on a rule which may not exclude some obviously sham arrangements, we think it clear that Congress could rationally choose to adopt such a course. Large numbers of people are eligible for these programs and are potentially subject to inquiry as to the validity of their relationships to wage earners.
>
> • • • • •
>
> Not only does the prophylactic approach thus obviate the necessity for large numbers of individualized determinations, but it also protects large numbers of claimants who satisfy the rule from the uncertainties and delays of administrative inquiry into the circumstances of their marriages. Nor is it at all clear that individual determinations could effectively filter out sham arrangements, since neither marital intent, life expectancy, nor knowledge of terminal illness has been shown by appellees to be reliably determinable. Finally, the very possibility of prevailing at a hearing could reasonably be expected to encourage sham relationships.
>
> The administrative difficulties of individual eligibility determinations are without doubt matters which Congress may consider when determining whether to rely on rules which sweep more broadly than the evils with which they seek to deal. In this sense, the duration-of-relationship requirement represents not merely

> a substantive policy determination that benefits should be awarded only on the basis of genuine marital relationships, but also a substantive policy determination that limited resources is an expression of Congress' policy choice that the Social Security system, and its millions of beneficiaries, would be best served by a prophylactic rule which bars claims arising from the bulk of sham marriages which are actually entered, which discourages such marriages from ever taking place, and which is also objective and easily administered.
>
> The Constitution does not preclude such policy choices as a price for conducting programs for the distribution of social insurance benefits. Cf. *Geduldig* v. *Aiello,* 417 U.S. [484], at 496, 94 S.Ct. 2485, 41 L.Ed.2d 256; *Weinberger* v. *Salfi,* supra at 781-785, 95 S.Ct. 2475-2476.
>
> Similar considerations are applicable here. The administrative difficulties and uncertainties created by individualized determinations are no less. Nor can it be urged that the efficacy of an individualized determination would be greater in this context for intent is a difficult matter to prove.
>
> The attempt to attack the statute as creating an irrebuttable presumption is merely another way of challenging the classification. Every pattern of classification necessarily creates a distinction between those in different groups. Nor can it be said that this is a "suspect" classification. Compare *Weber* v. *Aetna Casualty and Surety Company,* 1972, 406 U.S. 164, [92 S.Ct. 1400, 31 L.Ed.2d 768,] which held invalid a statute barring legal disability on illegitimacy: "[T]he classification is justified by no

legitimate state interest, compelling or otherwise." Whether a person's status is a fact of her personal history over which she had no control is one factor to be considered in determining whether a classification that takes that status into account is suspect. But it is not per se determinative. The status of being adopted has not historically been a focus of discrimination; it causes no enduring social stigma, it has never limited access to the electoral process. Hence, different treatment of adopted children and natural children does not mean that adopted children are placed in a suspect class.

The present statute does not punish the plaintiff for her status, Cf. *Heiner* v. *Donnan,* 1932, 285 U.S. 312, 52 S.Ct. 358, 76 L.Ed. 772; *Scales* v. *United States,* 1961, 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed.2d 782. It does not expose her to social oppression because she is adopted. She is not deprived of anything merely because she is adopted, for adopted children are eligible for benefits. The statute does draw a distinction between those adopted children who are eligible for benefits and those who are not.

Accordingly the defendant's motion for summary judgment is GRANTED.

APPENDIX B

Decisions of the Social Security Administration

May 22, 1974

437-32-7804 HC1

Frank Williams
332 Dearmas Street
New Orleans LA 70114

on behalf of Angela M. Williams.

We cannot pay benefits to Angela as your adopted child because a requirement of the social security law is not met. An adopted child must have been living with the disabled worker in the United States and receiving at least one-half support from the worker throughout the one year period immediately before the month in which the worker became entitled to disability benefits or the month in which the worker's period of disability began. We find that Angela does not meet these requirements, and therefore cannot be entitled under the old or new laws.

1600/6
829 (2.74)

DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE
SOCIAL SECURITY ADMINISTRATION

RECONSIDERATION DETERMINATION

	DISTRICT OFFICE
Bureau of Disability Insurance	Metairie, Louisiana
NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON Frank Williams	SOCIAL SECURITY NUMBER 437-32-7804

NAME OF CLAIMANT
Frank Williams for
Angela M. Williams

TYPE OF CLAIM
Child's Insurance Benefits

DETERMINATION:

On January 15, 1974, Mr. Frank Williams filed an application for child's insurance benefits on behalf of Angela M. Williams, on his earnings record. The claim was disallowed on May 22, 1974, because Angela did not meet the definition of "child" as defined in the Social Security Act. On June 11, 1974, Mr. Williams requested reconsideration of this decision.

The Social Security Act provides that the Administration shall make findings of fact as to the rights of individual applicants for benefits. It further provides that child's insurance benefits may be paid to the child of a worker entitled to disability insurance benefits if the child meets the definition of child and all other requirements for entitlement.

Section 202(d)(1)(c) of the Social Security Act provides as one of the requirements for child's insurance benefits, that the child be dependent upon the individual entitled to disability insurance benefits. Section 202(d)(8) of the Act further provides that a child adopted after an individual becomes entitled to disability insurance benefits cannot meet the dependency requirements unless such child,

(1) is the natural child or stepchild of the disabled worker; or,

(2) was legally adopted by the disabled worker in an adoption decreed by a court of competent jurisdiction within the United States, and was living with and receiving at least one-half support from the disabled worker for the year immediately before the month in which the disabled worker became entitled to disability insurance benefits.

Mr. Williams' disability began on July 8, 1971 and he became entitled to disability insurance benefits beginning February 1972. Angela M. Williams was born June 17, 1972, and was adopted by Mr. Williams and his wife on January 15, 1974. Since Angela was both born and adopted after Mr. Williams became entitled to disability insurance benefits, she cannot meet the dependency requirements as of February 1972, and, therefore, she does not qualify as Mr. Williams' "child".

cc:
District Office, Metairie, Louisiana

Silesky:cas 8/8/74

Since Angela does not meet the status of "child" as defined in the Social Security Act, she is not entitled to child's insurance benefits. The determination of May 22, 1974 is correct in accordance with the law and is hereby affirmed.

AUTHORITY: Section 202(d) of the Social Security Act, as amended.

.....

Robert J. Duvall, Director
Division of Reconsideration
Bureau of Disability Insurance

Aug. 8, 1974
Date

DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

HEARING DECISION

In the case of

Frank Williams for
Angela M. Williams
(CLAIMANT)

.....

(WAGE EARNER) (LEAVE BLANK IF SAME AS ABOVE)

Claim for

CHILD'S INSURANCE BENEFITS

437-32-7804
(SOCIAL SECURITY NUMBER)

The Administrative Law Judge heard the testimony of the claimant and the facts brought out at the hearing were identical with those contained in the record. The claimant's representative contended that the claimant was denied due process and was discriminated against as under the laws of Louisiana the child would be entitled to all the rights of a legally adopted child. The facts show this contention has no merit, therefore, the Administrative Law Judge is adopting the findings of fact and conclusions of Law of the Social Security Administration's reconsideration determination by incorporating it in his decision as follows:

On January 15, 1974, Mr. Frank Williams filed an application for child's insurance benefits on behalf of Angela M. Williams, on his earnings record. The claim was disal-

lowed on May 22, 1974, because Angela did not meet the definition of "Child" as defined in the Social Security Act. On June 11, 1974, Mr. Williams requested reconsideration of this decision.

The Social Security Act provides that the Administration shall make findings of fact as to the rights of individual applicants for benefits. It further provides that child's insurance benefits may be paid to the child of a worker entitled to disability insurance benefits if the child meets the definition of child and all other requirements for entitlement.

Section 202(d)(1)(c) of the Social Security Act provides as one of the requirements for child's insurance benefits, that the child be dependent upon the individual entitled to disability insurance benefits. Section 202(d)(8) of the Act further provides that a child adopted after an individual becomes entitled to disability insurance benefits cannot meet the dependency requirements unless such child,

(1) is the natural child or stepchild of the disabled worker; or,

(2) was legally adopted by the disabled worker in an adoption decreed by a court of competent jurisdiction within the United States, and was living with and receiving at least one-half support from the disabled worker for the year immediately before the month in which the disabled worker became entitled to disability Insurance Benefits.

Mr. Williams' disability began on July 8, 1971 and he became entitled to disability insurance benefits beginning February 1972. Angela M. Williams was born June 17, 1972, and was adopted by Mr. Williams and his wife on January 15, 1974. Since Angela was both born and adopted after

Mr. Williams became entitled to disability insurance benefits, she cannot meet the dependency requirements as of February 1972, and, therefore, she does not qualify as Mr. Williams' "child".

Since Angela does not meet the status of "child" as defined in the Social Security Act, she is not entitled to child's insurance benefits. The determination of May 22, 1974, is correct in accordance with the Law and is hereby affirmed.

AUTHORITY: Section 202(d) of the Social Security Act, as amended.

DECISION

It is the decision of the Administrative Law Judge that Frank Williams on behalf of Angela M. Williams is not entitled to Child's Insurance Benefits under the Act.

/s/ GEORGE M. PONDER
George M. Ponder
Administrative Law Judge

August 26, 1975

(Emblem)

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

SOCIAL SECURITY ADMINISTRATION
P.O. Box 2518, WASHINGTON, D.C. 20013

IHA-2
REFER TO: 437-32-7804

BUREAU OF
HEARINGS AND APPEALS

11 DEC 1975

ACTION OF APPEALS COUNCIL ON
REQUEST FOR REVIEW

Mr. Frank Williams
for Ms. Angela Williams
1114 Teche Street
New Orleans, Louisiana 70114

Dear Mr. Williams:

Your request for review of the decision in your case has been carefully considered by the Appeals Council. The Council considered all the evidence in your case, the applicable law and regulations, the reasoning and the evaluation of the facts in the decision, and your reasons for believing that your claim should be allowed.

The Appeals Council has decided that the decision is correct. Further action by the Council would not, therefore, result in any change which would benefit you. Accordingly, the hearing decision stands as the final decision of the Secretary in your case.

If you desire a court review of the hearing decision, you may commence a civil action, within sixty (60) days from

the date of this letter, in the district court of the United States in the judicial district in which you reside. See section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g)), and section 422.210 of Social Security Administration Regulations No. 22 (20 CFR 422.210).

If such action is commenced, the Secretary of Health, Education, and Welfare is the proper defendant. Also, please include your social security number in the Bill of Complaint.

Sincerely yours,

John W. Chambers
Member, Appeals Council

cc:
Mr. Richard Ison
Attorney at Law
New Orleans, Louisiana 70114

Form HA-L28
(3/75)

APPENDIX C

Statutory Provisions Involved

Social Security Act §202(d)(1), 42 U.S.C. §402(d)(1).

(d)(1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d)) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950

in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month.

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22, but only if he was not under a disability (as so defined) in such earlier month; or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22, the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22, but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

Social Security Act §202(d)(3), 42 U.S.C. §402(d)(3).

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall be deemed to be the legitimate child of such individual.

Social Security Act §202(d)(4), 42 U.S.C. §402(d)(4).

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)

(C), if, at such time, the child was living with or was receiving at least one-half of his support from such stepfather or stepmother.

Social Security Act §202(d)(8), 42 U.S.C. §402(d)(8).

(8) In the case of—

(A) An individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D) (i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such indi-

vidual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or the month in which such individual became entitled to disability insurance benefits, or (III) if he is an individual referred to in either subparagraph (A) or subparagraph (B) and the child is the grandchild of such individual or his or her spouse, for the year immediately before the month in which such child files his or her application for child's insurance benefits, and

(iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.

Social Security Act §216(e), 42 U.S.C. §416(e).

(e) The term "child" means (1) the child or legally adopted child of an individual, (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) there was no natural or adoptive parent (other than such a parent who was under a disability, as defined in section 223(d)) of such person living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was at the time of such individual's death living in such individual's household and was legally adopted by such individual's surviving

spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) the date of enactment of the Social Security Amendments of 1958; except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare organization which furnishes services or assistance for children. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, if such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h)(1)(B), would have been a valid marriage.

In the Supreme Court of the United States

OCTOBER TERM, 1977

ANGELA M. WILLIAMS AND FRANK WILLIAMS,
PETITIONERS

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1533

ANGELA M. WILLIAMS and FRANK WILLIAMS,
PETITIONERS

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH,
EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners challenge the constitutionality of Section 202(d)(8) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (Supp. V) 402(d)(8), under which "after-adopted" children—those adopted after their adoptive parent became eligible for disability benefits—are not entitled to a presumption of dependency on the adoptive parent.

1. Under the Social Security Act, children of persons receiving disability benefits are entitled to child's insurance benefits if, *inter alia*, they are "dependent" on the disability beneficiary at the time of their application. 42 U.S.C. (Supp. V) 402(d)(1). Legitimate children and children adopted prior to the time the disabled beneficiary became entitled to benefits are presumed to be dependent

and thus automatically are eligible for benefits. 42 U.S.C. 402(d)(3). Children adopted after the disabled person becomes entitled to benefits are not eligible for child's benefits, however, unless they are (1) natural children or stepchildren of the disabled beneficiary; (2) children who were living with and receiving at least half their support from the disabled beneficiary for the year immediately before the period of disability began; or (3) grandchildren adopted by a grandparent with whom they had lived for a year before their application for child's benefits. 42 U.S.C. (Supp. V) 402(d)(8).

Petitioner Angela Williams was adopted by petitioner Frank Williams in January 1974, approximately two years after Frank Williams began receiving disability benefits (Pet. App. 4a-5a).[1] Frank Williams's application for child's insurance benefits on Angela's behalf was denied administratively on the basis of 42 U.S.C. (Supp. V) 402(d)(8) (Pet. App. 13a-21a). Petitioners sought review in the district court pursuant to 42 U.S.C. 405(g). The sole issue was the constitutionality of 42 U.S.C. (Supp. V) 402(d)(8), which petitioners alleged violated the Due Process Clause of the Constitution.

On April 11, 1977, the district court entered summary judgment in favor of the Secretary of Health, Education, and Welfare (Pet. App. 2a-12a). The court held that 42 U.S.C. (Supp. V) 402(d)(8) has a rational basis reasonably related to the legitimate congressional goal of minimizing the potential for abuse resulting from the adoption of children solely for the purpose of securing benefits; accordingly, the statute satisfies the test for the constitutionality of a statutory social welfare classification that was reiterated by this Court in *Weinberger* v. *Salfi*,

[1]Indeed, Angela Williams was born after Frank Williams began receiving disability benefits (Pet. App. 4a).

422 U.S. 749 (Pet. App. 5a, 8a-12a). The court of appeals affirmed for the reasons given by the district court (Pet. App. 1a).

2. The principles of *Weinberger* v. *Salfi*, *supra*, control this case. Recognizing the special need in welfare programs for prophylactic rules to guard against potential abuse, this Court held in *Salfi* that statutory rules must be sustained even if they are " 'under-inclusive' or 'over-inclusive,' " so long as Congress "could rationally have concluded" that a prophylactic rule is justified and that the standard chosen would protect against abuse. *Salfi*, *supra*, 422 U.S. at 776-777. See also *Cleland* v. *National College of Business*, No. 77-716, decided March 20, 1978; *Mathews* v. *De Castro*, 429 U.S. 181, 185.

Section 402(d)(8) deals with a relatively narrow category of situations in which there is a considerable potential for abuse—adoptions that take place after the worker's entitlement to disability benefits arises. Such adoptions, like the marriages at issue in *Salfi*, could be motivated by an improper desire to obtain benefits, and Congress therefore was entitled to devise a rule to protect against that possibility. Moreover, the statute allows after-adopted children to receive benefits if they fall into one of three categories (see page 2, *supra*) that Congress concluded offered the least chance of abuse. The classifications made by 42 U.S.C. 402(d)(8) thus are rationally related to the legitimate congressional goal of minimizing the risk of adoptions motivated by a desire to make the children eligible for benefits—benefits that are designed to replace support that children received from the wage-earner, but which children adopted after the disability began never could have received or relied on.

Jimenez v. *Weinberger*, 417 U.S. 628 (invalidating a statutory classification precluding after-born illegitimate children from receiving benefits), on which petitioners rely

(Pet. 7-9), is quite unlike this case. In *Jimenez* this Court found that the connection between the legislative end—guarding against fabrication of evidence of paternity—and the statutory classification was not rational, since there was no reason why the wage earner was any more likely to fabricate evidence of paternity for children born after his entitlement than for children born before. 417 U.S. at 636-637. By contrast, special concern about the possibility of abuse for after-adopted children is rational because the incentive for an improperly motivated adoption increases substantially once the wage earner becomes entitled to benefits.

Petitioners also rely (Pet. 9-10) on *Vlandis* v. *Kline*, 412 U.S. 441, and urge that the statute here creates an "irrebuttable presumption." But in *Salfi* this Court concluded that the *Vlandis* analysis should not be applied to social welfare statutes that do not implicate fundamental constitutional rights. In *Salfi* itself the Court concluded that a duration-of-marriage rule constitutionally could be employed to guard against marriages motivated by the prospect of receiving benefits. The same principle applies here, where the after-adopted child rule guards against adoptions motivated by the prospect of receiving benefits.[2]

---

[2]Petitioners observe (Pet. 6-7) that certiorari was granted in *Morris* v. *Richardson*, 409 U.S. 841, to review the constitutionality of the predecessor of the provision at issue here, but the writ was dismissed as improvidently granted *sub nom. Morris* v. *Weinberger*, 410 U.S. 422, when the provision in question was repealed. *Salfi* was decided after the dismissal in *Morris*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1978.

DOJ-1978-06